

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



January 10, 1980

ALL-COUNTY INFORMATION NOTICE I-8-80

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: MILLER v. YOUAKIM: PAYMENT OF AFDC-BHI TO RELATED CARETAKERS
OF FEDERALLY ELIGIBLE CHILDREN

REFERENCE:

These emergency regulations implement the Miller v. Youakim U.S. Supreme Court decision in California. This 1979 ruling found that children who are otherwise federally eligible for the AFDC-BHI Program could not be denied benefits under this program solely because of placement with nonlegally liable relatives. Implementation of these regulations also resolves an outstanding issue of noncompliance with a 1974 HEW Program Instruction (APA-PI-75-9) and subsequent state plan disapproval by HEW.

The regulations clarify the eligibility requirements for federal financial participation in AFDC-BHI payments. Particularly important to note is that removal of a child by court order from the home of a nonlegally liable caretaker relative and replacement in that same relative's home would not fulfill the federal requirement for removal and placement into foster care. Also, licensing requirements for AFDC-BHI are clarified. Since most relatives homes are statutorily exempt from licensure, an approval process, similar to that now used for guardians, will satisfy the requirement.

The regulations permit a choice of program - AFDC-FG/U or AFDC-BHI - by caretakers on behalf of children who meet all eligibility requirements for AFDC-FG/U and AFDC-BHI with federal financial participation. If AFDC-FG/U is chosen by the caretaker, the case shall be treated in all respects as an AFDC-FG/U case. Similarly, if AFDC-BHI is chosen, the case shall be treated in all respects as an AFDC-BHI case.

o Implementation of Regulations

Children on whose behalf an application or request for restoration of AFDC is made shall be considered for eligibility under both AFDC-FG/U and AFDC-BHI, where appropriate, immediately upon the effective date of these regulations.

The identification and transfer to AFDC-BHI, where appropriate, of children now aided under the AFDC-FG/U Program shall be completed within six months of the effective date of these regulations. No particular procedure for identifying children now receiving AFDC-FG/U who might be eligible to receive AFDC-BHI, or for completing the intraprogram status changes for such children is required. The following information developed with the assistance of county staff may provide suggestions for planning the implementation of the regulations.

1. Identification of Children Receiving AFDC-FG/U Who May Be Eligible To AFDC-BHI

A. Review of Out-of-Home Care for Children and Probation Caseloads

In many counties, all children removed from their own homes due to court action under Sections 300, 601, and 602 of the Welfare and Institutions (W&I) Code (and hence potentially federally eligible) receive a full complement of social services regardless of whether they are now aided under AFDC-BHI or AFDC-FG/U, or are unaided. For these counties, a review of Out-of-Home Care/Probation caseloads to identify children placed with relatives and receiving AFDC-FG/U may be the most efficient means of identifying the population which is impacted by these regulations.

B. Review of AFDC-FG/U Caseload

If it is less certain that all children in the county who were removed from their own homes by court action under W&I Code Sections 300, 601, and 602, receive social services if they do not also receive payments under the AFDC-BHI Program, it may be necessary to review the entire AFDC-FG/U caseload to identify children potentially eligible to receive AFDC-BHI. AFDC-FG/U cases in which children residing with nonlegally liable relatives are receiving aid must be reviewed to determine if the reason that these children are living apart from their parents was a court order for their removal under W&I Code Sections 300, 601, or 602.

2. Identification of Federally Eligible Children; Notifying Caretaker Relative of Potential AFDC-BHI Eligibility

These two steps are grouped together because it may not be possible to ascertain whether a child meets the federal eligibility requirements for AFDC-BHI without contacting the caretaker relative.

- A. The county may review AFDC-FG/U cases in which aided children are living with nonlegally liable relatives to identify those children removed from their own homes by court order, but still must establish the linkage to federal AFDC-FG/U in the

month in which the petition which led to removal was filed with the court in order to establish the second major requirement for federal financial participation. The caretaker may have information essential to this determination.

- B. Conversely, the county may want to ascertain whether the caretaker is interested in receiving benefits under the AFDC-BHI Program prior to completing the determination of whether or not the child meets federal eligibility requirements for AFDC-BHI.

3. Offer of Program Choice

At the request of county staff who reviewed draft regulations, a form has been developed as an aid to focus discussion with the caretaker about dual program eligibility and his/her option to choose between AFDC-FG and AFDC-BHI. Form CA 1002, AFDC-BHI/AFDC-FG/U Program Choice Indicator, may be used in an interview setting with a caretaker or may be mailed. A copy of the signed form should be given to the caretaker and one should be retained in the case record to document that the program choice was offered and what the caretaker's decision was. An initial supply of forms has been shipped to all counties. (See copy attached)

The form should be used in discussion with current AFDC-FG/U caretakers and with persons applying for or requesting restoration of AFDC benefits on behalf of a child removed from his/her own home and placed with a nonlegally liable relative by court order.

4. Denial of AFDC-BHI Benefits

Some caretaker relatives who request AFDC-BHI benefits on behalf of children in their care may not be able to receive them because the child does not meet all federal eligibility requirements for this program. When the caretaker relative has requested benefits under AFDC-BHI and it is determined that federal eligibility requirements are not met, the following suggested wording would be appropriate for a Notice of Action.

"Your request for AFDC-BHI benefits for (child's name) is denied because (child's name) does not meet all eligibility requirements for federal participation in AFDC-BHI. Only children who meet all these requirements and are in foster care with relatives may select AFDC-BHI benefits. The specific requirement(s) not met is/are: (E.g., no court order removed (child's name) from his/her own home and caused placement into your home; (child's name) is his/her own payee; (child's name) does not meet the required linkage to federal AFDC-FG/U in the month in which the petition which led to removal was filed with the court.)

(Child's name) continues to be eligible to receive AFDC-FG/U in the amount of \$_____ per month".

Citations:

44-323.122

When choice is available

44-323.14

Federal eligibility requirements
for AFDC-BHI

Note: No Notice of Action is required when the caretaker decides to continue to receive AFDC-FG/U. Changes in the AFDC-FG/U grant or FBU composition as a result of the caretaker's choice should be indicated in the usual manner. Current procedures regarding notifying the caretaker of grants or changes in the AFDC-BHI case should be followed.

o Assignment of Tasks for Implementation

Counties may employ the staff they feel best able to complete the tasks required for implementation of Miller v. Youakim. Some counties favor a team approach whereby several staff including AFDC-FG/U eligibility workers, AFDC-BHI eligibility workers, and social workers work together to identify and transfer all cases as appropriate.

o Case Identifier

Counties may find it helpful to employ a numeric or alpha "Miller v. Youakim" case identifier, for both or either AFDC-FG/U and AFDC-BHI cases which are affected by the ruling. No such indicator is required; however the reporting requirements outlined in All County Letter No. 79-80 may be more easily fulfilled if a case identifier is used.

o Intercounty Transfers

As stated above, once AFDC-FG/U is chosen, a case will be treated in all respects as such. Similarly, once AFDC-BHI is chosen the case is for all purposes an AFDC-BHI case.

Because county-set payment levels for AFDC-BHI vary, a move from one county to another may cause the caretaker to decide to choose the other program under which the child in his/her care is eligible. When this happens, the first county is required to make the appropriate intra-program status change (from AFDC-FG/U to AFDC-BHI, or vice versa) and then follow the appropriate intercounty transfer rules which apply to the resulting program.

Examples

1. Susie is a federally eligible dependent child of the court in County A, placed with her aunt in that same county. County A's AFDC-BHI rate for Susie's age group is \$225, and the aunt has chosen to receive AFDC-BHI for Susie. When Susie and her aunt move to County B, they learn that County B's AFDC-BHI rate for

Susie's age group is \$175. They decide to receive benefits under AFDC-FG/U (MAP for one = \$201, effective July 1, 1979). County A completes the intraprogram status change from AFDC-BHI to AFDC-FG/U. County A initiates transfer to County B, since the county of responsibility in AFDC-FG/U is the county of physical residence (Section 40-189.12).

Note: The rule contained in Section 40-187.212 would apply in this situation.

2. Johnny is a federally eligible dependent of the court in County A, placed with his grandmother in that same county. County A's AFDC-BHI rate for Johnny's age group is \$190. His grandmother has chosen to receive AFDC-FG/U for Johnny, since the current MAP for one (\$201, effective July 1, 1979) exceeds the amount available under AFDC-BHI. Upon moving to County C, the grandmother learns that the AFDC-BHI rate for Johnny's age group is \$250. She now requests AFDC-BHI. County A completes the intraprogram status change from AFDC-FG/U to AFDC-BHI. Responsibility for payment at County C's rate remains with County A. See Section 40-189.122.
3. Mary receives AFDC-FG/U with her aunt and her aunt's two eligible children. Immediately after moving to County B, the aunt notifies County A of this change and requests County A to explore AFDC-BHI eligibility for Mary. It develops that Mary is a federally eligible dependent of County C's juvenile court (Mary's mother still resides in County C). County A is responsible for the intraprogram status change for Mary from AFDC-FG to AFDC-BHI (to be paid at County B's rate), and then for transferring aid payment responsibility for Mary's aunt and children (AFDC-FG recipients) to County B, and for transferring aid payment responsibility for Mary to County C.

Please contact your AFDC management consultant at (916) 445-4458 if you have any questions.

Sincerely,

Claude Finn for:
 KYLE S. McKINSEY
 Deputy Director

Attachments

cc: CWDA

**AFDC-BHI / AFDC-FG/U
PROGRAM CHOICE INDICATOR**

CASE NAME	CASE NUMBER	CHILD'S NAME
-----------	-------------	--------------

A 1979 US Supreme Court ruling makes it possible for you to choose to receive aid under either AFDC-BHI (Boarding Homes and Institutions) or AFDC-FG/U (Family Group or Unemployed Parent) for the above-named related child placed in your care as a result of a court order. This choice is available to caretaker relatives, other than parents, of children who meet all federal eligibility requirements for AFDC-BHI as well as eligibility requirements for AFDC-FG/U. You may want to discuss this choice with your social worker.

Read the descriptions of the two programs below carefully before deciding under which one you want to receive aid for the above-named child. Then, indicate your choice by checking one of the two boxes below. Sign and date the form.

	AFDC-BHI	AFDC-FG/U
GRANT AMOUNT	\$ _____ per month in one payment.	\$ _____ per month in two payments.
DATE(S) PAID	On the _____ of the month after the costs are incurred.	On the _____ and _____ of the month in which the costs are incurred.
SOCIAL SERVICES	Social worker or probation officer visits and reviews are eligibility requirements.	Provision of social services may be required by the court, but is not an eligibility requirement for payment.
LICENSING/ APPROVAL OF HOME	Home must be licensed, or exempt from licensing and approved before payment can be made. Most relatives' homes are exempt from licensing but must be approved.	No special requirements for payment.
AID FOR OTHER FAMILY MEMBERS	If this is the only eligible child in your home, no other family member can receive AFDC payments.	Persons in your home who are related to this eligible child may also receive AFDC payments.
REDETERMINATION OF ELIGIBILITY	Required at least every six months.	Required at least once a year.
ELIGIBILITY WORKER	NAME	NAME
	PHONE NUMBER	PHONE NUMBER
OTHER		

I have read the above and understand that I may choose either AFDC-BHI or AFDC-FG/U for _____ a related child placed in my care as a result of a court order. I choose:

☐ AFDC-BHI

☐ AFDC-FG/U

CARETAKER SIGNATURE	DATE
AGENCY REPRESENTATIVE SIGNATURE	PHONE NUMBER

1/79)

FACSIMILE
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

RECEIVED FOR FILING

JAN 07 1980

Office of Administrative Hearings

ENDORSED

FOR FILING
DE 11380.21

JAN 07 1980

Office of Administrative Hearings

DO NOT WRITE IN THIS SPACE

Copy below is hereby certified to be a true and correct copy of regulations adopted, or amended, or an order of repeal by:

Department of Social Services

(Agency)

Date of adoption, amendment, or repeal:

December 31, 1979

By:

M. J. [Signature]

Director

(Title)

JAN 7 3 55 PM 1980

MARCH FONG EU
SECRETARY OF STATE
OF CALIFORNIA

DO NOT WRITE IN THIS SPACE

The attached regulations which are being adopted, amended or repealed are contained in Title _____ of the California Administrative Code.

(Optional): Division, Part, Chapter, etc., affected by this order: _____

(Check as appropriate)

TYPE OF ORDER:

- ☒ Emergency
- ☐ Certificate of Compliance
- ☐ Certificate of Non-Compliance
- ☐ Regular
- ☐ Procedural and Organizational

(Check one)

EFFECTIVE DATE:

- ☒ On filing with Secretary of State
- ☐ On _____ (designated effective date)
- ☐ On _____ as specified by Statutes
- ☐ On 30th day after filing

(Check one)

CHECKLIST OF MANDATORY REQUIREMENTS

- ☒ Eight copies of order or Certificate attached.
- ☒ Original signature on at least one copy.
- ☒ Regulation Summary (Form 590 or equivalent) attached (1 copy).
- ☐ Publication data (in Notice Register) of notice for attached order or Certificate of Compliance is _____
- ☒ Authority and reference citation placed beneath each section in attached order.

(Check one)

REIMBURSABLE COSTS:

- ☐ These are "no cost" regulations under Revenue and Taxation Code Section 2231, and State Administrative Manual Section 6052.1.
- ☒ These are "disclaimable cost" regulations under Revenue and Taxation Code Section 2231. A clarifying disclaimer statement is attached, pursuant to State Administrative Manual Section 6052.2.
- ☐ These are "cost" regulations under Revenue and Taxation Code Section 2231. This agency has followed the provisions of State Administrative Manual Section 6052.3.

(Check one)

BUILDING STANDARDS

- ☒ These regulations contain no building standards under Health and Safety Code Sections 18900-18915.
- ☐ These regulations do contain building standards under Health and Safety Code Sections 18900-18915. The date of approval by the Building Standards Commission is _____

(Check one if attached are Conflict of Interest Regulations)

CONFLICT OF INTEREST

The attached Conflict of Interest Regulations contain the FPBC approval stamp and:

- ☐ Are to be published in full in the Administrative Code.
- ☐ Are to be codified by appropriate reference in the Administrative Code, and include a statement as to where the full text may be obtained.

(Check if emergency campaign disclosure regulations)

CAMPAIGN DISCLOSURES

- ☐ These are emergency regulations pertaining to campaign disclosure law and were adopted by unanimous vote of all members of commission present at the regulation adoption proceeding.

DO NOT WRITE IN THIS SPACE

This agency certifies the attached orders are necessary for the immediate preservation of the public peace, health and safety or general welfare. The specific facts constituting the need for immediate action are: (attach continuation sheet, if necessary)

The U.S. Supreme Court has ruled that under Section 408 of the Social Security Act a state may not exclude otherwise eligible children from the Federal AFDC Foster Care Program solely because they are residing with foster parents who are related to them. (Miller v. Youakim, 99 S.Ct.957, 1979.)

By letter dated 10/18/79, the Department of Health, Education and Welfare reiterated its instruction, previously set out in Action Transmittal SSA-AT-79-32 (OFA), 8/15/79, that under Section 408 of the Social Security Act and 45 CFR 233.110(b)(1) all states must provide Federal AFDC Foster Care benefits to otherwise eligible children, whether or not the foster parents with whom they are placed are related to them.

In order to meet the requirements of federal law, as defined by the U.S. Supreme Court and the Dept. of Health, Education and Welfare, and to provide the benefits to which the affected children are entitled and upon which they rely for their support, it is necessary that these regulations become effective immediately.

Adoption of these regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Therefore, these regulations are adopted on an emergency basis to become effective upon filing with the Secretary of State.

The blanket citation of authority and reference for this emergency action is:

Authority: W&IC Sections 10553, 10600, and 11400.

Reference: Miller v. Youakim, 99 S. Ct. 957, 1979, SSA Action Transmittal, SSA-AT-79-32 (OFA), 8-15-79, W&IC Sections 11003 and 11251, and 45 CFR 206.10(a)(1)(i).

The name and phone number of the agency officer to whom inquiries about the emergency order may be directed are:

NAME Louis Lee

Phone (916) 445-1419

(Complete one:)

(Complete one:)

_____ These regulations involve no costs or savings to local, state or federal government under Government Code Section 11421.

X _____ These regulations do involve costs or savings to local, state or federal government under Government Code Section 11421. An estimate of these costs or savings is attached to this order.

X _____ To fulfill Government Code Section 11421, attached is an information digest, providing a clear and concise summary of existing laws and regulations, if any, related directly to the proposed action and the effect of the proposed action.

_____ To fulfill Government Code Section 11421, express terms of emergency are attached.

(Check if applicable:)

These emergency regulations are a readoption of a previous emergency order which has not yet been certified, or it is substantially equivalent to a previous emergency order which has not yet been certified. Approval of the Governor was obtained on:

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

INFORMATIVE DIGEST

These regulations implement the Miller v. Youakim U.S. Supreme Court ruling which states that otherwise eligible children cannot be excluded from receiving AFDC-BHI payments solely on the basis that they are placed with a relative. Currently, state regulations exclude children placed with relatives from its AFDC-BHI Program, whether or not they are federally eligible. These revisions state that a child, placed with a relative other than a parent, who otherwise meets all general and federal AFDC-BHI eligibility requirements as well as general AFDC-FG/U Program requirements, may be eligible under the federal AFDC-BHI Program or AFDC-FG/U, at the caretaker's option. Current regulations require the welfare department to provide the District Attorney's office with specific information concerning child support cases. These revisions add to that listing that the welfare department advise the District Attorney's office if: (1) a child stops receiving AFDC-BHI and starts receiving AFDC-FG, or vice versa, or (2) a child moves out of foster care and begins living with a parent. Current regulations do not speak to what constitutes an approved home. These revisions itemize what constitutes an approved home.

DO NOT WRITE IN THIS SPACE

CONTINUATION SHEET
**FOR FILING ADMINISTRATIVE REGULATIONS
 WITH THE SECRETARY OF STATE**
 (Pursuant to Government Code Section 11380.1)

Cost Estimate:

	Miller v. Youakim Court Placed/Federal Eligibility Only F.Y. 1979-80	Miller v. Youakim Court Placed/Federal Eligibility Only F.Y. 1980-81
Youakim (Total)		
Total	\$1,924,500	\$5,366,900
Federal	1,791,400	4,813,100
State	137,000	558,500
County	-3,900	-4,700
AFDC Grants		
Total	\$1,637,100	\$4,602,200
Federal	1,647,700	4,430,800
State	65,200	367,300
County	-75,800	-195,900
AFDC Administration		
Total	\$287,400	\$764,700
Federal	143,700	382,300
State	71,800	191,200
County	71,900	191,200
Social Services *		
Total	(\$698,800)	(\$1,832,700)
Federal	(516,600)	(1,374,500)
State	(-0-)	(-0-)
County	(172,200)	(458,200)

* The costs indicated for the Social Services program represent an estimate of the impact of the Youakim caseload within existing Title XX allocations.

There are no state mandated local costs in this regulation that requires reimbursement under Section 2231 of the Revenue and Taxation Code because the regulation is necessary to comply with what has been declared existing federal law by the U.S. Supreme Court in Miller v. Youakim.

**FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE**

(Pursuant to Government Code Section 11380.1)

Amend Section 40-103.843 to read:

40-103 DEFINITIONS AND DESIGNATIONS — GENERAL (Continued)**.84 Continued**

.843 AFDC-BHI payment under the Aid to Families with Dependent Children Program is payment for a child who requires 24-hour a day care in a licensed or

approved foster family home or a licensed institution

pending return to his/her own home, or in accordance with the development and implementation of a continuing plan of care as provided in Section 30-209

Authority: W&IC §§ 10553, 10600, and 11400.

Reference: W&IC §§ 11450(b) and (c), and 11251.

DO NOT WRITE IN THIS SPACE

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

Amend Section 40-109.2 to read:

40-109 APPLICANT RIGHTS WITH RESPECT TO APPLICATION FOR AID —
GENERAL

40-109

.2 Right to Choose Type of Aid

A person or his/her representative who believes the applicant meets the eligibility requirements for more than one category of aid has the right to choose the type of aid for which he/she will apply. For children in or in need of foster care placement who are eligible to and/or receive AFDC-BHI, see Sections 44-323.122 and 44-323.137.

Authority: W&IC §§ 10553, 10600, and 11400.

Reference: 45 CFR 206.10(a)(1)(i).

DO NOT WRITE IN THIS SPACE

**FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE**

(Pursuant to Government Code Section 11380.1)

Amend Section 40-125.8 (Title) and 40-125.81 to read:

40-125 PROCESSING APPLICATIONS, REAPPLICATIONS, AND RESTORATIONS
(Continued)

40-125

Foster Family

.8 Child Living in / Home or Institution

foster family

.81 A child living in a / home or private child care institution as a result of placement by a public agency, or by a private agency which has legal custody because the child has been relinquished to them or a court has given them legal custody, is considered to make his/her home in the county in which the agency is located, regardless of whether the / home or institution is situated in that county.

foster family

Where a private child care agency has made or desires to make a placement of a child placed voluntarily by the parent or legal guardian, application should be made in, or transferred to, the county in which the parent or guardian resides. If that county determines, pursuant to the approval of the private agency's services evaluation, that a need for placement exists, the procedures for voluntary placement outlined in Section 44-323.134 shall apply. The county welfare department shall also require, as a condition of eligibility, a statement every six months from the private agency that a plan is developed and services are being provided in accordance with Social Services Standards Manual Chapter 30-200.

The agency making or desiring to make a placement in a county other than the one in which the responsible agency is located, may request a service evaluation of the placement home by the county in which the home is located. In such situations, placement shall not be made nor AFDC-BHI authorized until the appropriateness of the placement home or institution is confirmed in accordance with Section 44-305.131.

For purposes of this section:

.811 A foster family home is a / family

home which accepts the child for board and care.

.812 A public or private agency, other than a private agency making a voluntary placement of a child not in their legal custody, is considered to have placed the child in a / home or institution if the agency:

foster family

a. Actively participated in making the decision as to whether or not the child was to be placed; and

b. Initiated the placement of the child, either through direct negotiations with the foster family home or institution or by requesting help in making the placement from the county in which the / home or institution is located.

foster family

Authority: W&IC §§ 10553, 10600, and 11400.

Reference: W&IC § 11450(c).

DO NOT WRITE IN THIS SPACE

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

Amend Section 40-189.24 to read:

40-189 RECIPIENT MOVES TO ANOTHER COUNTY TO "MAKE HIS
HOME" (Continued)

40-189

.2 Initiation of Intercounty Transfer Continued

.24 When a child receiving AFDC-FG/U or AFDC-BHI in one county
moves to the home of his/her parent(s) or relative(s) in
another county and these parent(s) or relative(s) are
requesting AFDC-FG/U on his/her behalf. (See Section
40-187.21_.)

Authority: W&IC §§ 10553, 10600, and 11400.

Reference: Miller v. Youakim, 99 S.Ct.957, 1979, HEW Action
Transmittal, SSA-AT-79-32 (OFA), 8-15-79, W&IC
§§ 11003 and 11251.

DO NOT WRITE IN THIS SPACE

CONTINUATION SHEET
**FOR FILING ADMINISTRATIVE REGULATIONS
 WITH THE SECRETARY OF STATE**
 (Pursuant to Government Code Section 11380.1)

Amend Section 43-201.21 to read:

43-201 CHILD SUPPORT AND PATERNITY (Continued)

43-201

AFDC | .2 Ongoing Child Support Activities Continued

- .21 The welfare department will provide the District Attorney with any information requested concerning child support cases. The welfare department shall also advise the District Attorney's office in writing if any of the following circumstances arise:
- .211 A person is added to or deleted from the FBU.
 - .212 The recipient children cease living with the person who is receiving aid on their behalf.
 - .213 A child moves out of foster care and begins living with a parent or relative.
 - .214 A child has been accepted for adoption by a public or private adoption agency or such an acceptance has been terminated.
 - .215 The recipient gets a child support payment from any person which was not forwarded to the county.
 - .216 Aid to the family has been otherwise discontinued.
 - .217 A child stops receiving AFDC-BHI and starts receiving AFDC-FG, or vice versa.

Authority: W&IC §§ 10553, 10600, and 11400.

Reference: Miller v. Youakim, 99 S. Ct. 957, 1979, SSA Action Transmittal, SSA-AT-79-32 (OFA), 8-15-79, W&IC §§ 11003 and 11251.

DO NOT WRITE IN THIS SPACE

CONTINUATION SHEET
**FOR FILING ADMINISTRATIVE REGULATIONS
 WITH THE SECRETARY OF STATE**
 (Pursuant to Government Code Section 11380.1)

Amend Section 44-203.11 to read:

44-203 PERSONS WHO MAY BE INCLUDED IN THE FBU

44-203

.1 Eligible Children

.11 An eligible child is a child including an unborn and/or a child whose caretaker
relative has selected AFDC-FG/U where eligibility also

exists for AFDC-BHI, who is:

- .111 A member of a financially eligible FBU (see 44-207 Financial Eligibility) and is,
- .112 Deprived of parental support and care, (see Chapter 41-400 Deprivation of Parental Support or Care) and is,
- .113 Under 18 years old or under 21 years old attending school, vocational training, etc., (see Chapter 42-100 Age) and is,
- .114 Not currently married and is,
- .115 Living in the home of a caretaker relative.

- a. "The home of a caretaker relative" is a family setting maintained or in the process of being established. A home exists so long as the relative assumes responsibility for the day to day care and control of the child.

An eligible child is considered to be living in the home of a caretaker relative even though the child and/or the relative is temporarily absent from the home. However, the caretaker relative must continue to have responsibility for the care and control of the child during the temporary absence.

Temporary absences include: hospitalization, attendance at school, visiting, vacationing, moving, trips made in connection with current or prospective employment, and similar situations. (See Section 44-305.132 for Special Circumstances Concerning Temporary Absence from a Foster Home or Institution).

- b. An eligible child is also considered to be living in the home of a caretaker relative where the child would be physically present in the home except for circumstances that require granting assistance to the relative for up to thirty days prior to the child's arrival in the relative's home from placement in a foster home or institution (see Section 44-267.2, Special Needs for Children in Foster Care).

Authority: W&IC §§ 10553, 10600, and 11400.

Reference: Miller v. Youakim, 99 S. Ct. 957, 1979, SSA Action Transmittal, SSA-AT-79-32 (OFA), 8-15-79, W&IC §§ 11003 and 11251, and 45 CFR 206.10(a)(1)(i).

DO NOT WRITE IN THIS SPACE

**FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE**

(Pursuant to Government Code Section 11380.1)

Adopt Section 44-206.18 to read:

44-206 PERSONS WHO MUST BE EXCLUDED FROM THE FBU (Continued) 44-206

.18 Child for whom a caretaker relative has selected aid
under the AFDC-BHI Program (See Section 44-323.122).

Authority: W&IC §§ 10553, 10600, and 11400.

Reference: Miller v. Youakim, 99 S. Ct. 957, 1979, SSA Action
Transmittal, SSA-AT-79-32 (OFA), 8-15-79, W&IC
~~XY~~ 11003 and 11251, and 45 CFR 206.10(a)(1)(i).

DO NOT WRITE IN THIS SPACE

CONTINUATION SHEET
**FOR FILING ADMINISTRATIVE REGULATIONS
 WITH THE SECRETARY OF STATE**
 (Pursuant to Government Code Section 11380.1)

Amend Section 44-305.13 (Introductory Paragraph) and .131 to read:

44-305 AID PAYMENTS — PAYEE AND DELIVERY Continued

44-305

APSR | .1 To Whom Paid and Delivered

Family

.13 Child in Foster Home or Institution

If a child is living in a foster ^{family} home or a private child care institution, payment may be made to (1) the foster family home, (2) the private child care institution, (3) the probation officer or (4) a cooperating public or private child placement or child care agency if licensed by the Department of Social Services where required, and if the child is under the care of such agency. Federal participation is available when payments made in behalf of children who meet the requirements of Section 44-323.14 are made to any of the above payees with the exception of a child in an unlicensed and unapproved foster home, a child in a licensed profit-making institution, or a child in a licensed profit-making private child placement or child care agency.

AFDC-BHI payments shall not be made for children placed in facilities other than foster family homes until and unless such facilities are licensed.

.131 AFDC-BHI Child in Unlicensed Home

(a) Payment of AFDC-BHI may be authorized but may not be paid until the foster family home in which the child is placed is either approved or licensed. This provision applies to the child for whom application is made, to the child receiving aid who is moved to a different foster family home, or to the child who at the time of reinvestigation is found to be living in a currently unlicensed home.

A foster family home may be approved by the county social worker or by the probation officer when there is a written agreement between the county welfare and probation department to provide services (see Section 29-405). An approved home is either:

DO NOT WRITE IN THIS SPACE

**FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE**

(Pursuant to Government Code Section 11380.1)

44-305 AID PAYMENTS - PAYEE AND DELIVERY (Continued)
.131 AFDC-BHI Child in Unlicensed Home (Continued)

44-305

(1) A home exempted from licensure by Health and Safety Code Section 1505, such as a relative's home, where the social worker or probation officer has determined and documented that the home is suited to the child's needs, as outlined in Section 30-206.151; or

(2) A home not exempted from licensure by Health and Safety Code Section 1505 for which:

(aa) A license application is pending and has not been refused; and

(bb) The social worker or probation officer certifies that the home meets licensing standards for foster family homes as defined in Title 22 of the California Administrative Code; and

(cc) Placement in a licensed facility is not feasible because a licensed facility, including an emergency shelter care facility, is not immediately available or does not meet the child's service needs; and

(dd) The child is placed by the social worker or probation officer under the authority of Welfare and Institutions Code Sections 362(1)(c) or 727(1)(c).

DO NOT WRITE IN THIS SPACE

CONTINUATION SHEET
**FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE**
(Pursuant to Government Code Section 11380.1)

44-305 AID PAYMENTS - PAYEE AND DELIVERY (Continued) 44-305

.131 AFDC-BHI Child in Unlicensed Home (continued)

(b) In the case of a child placed by direct court order under the authority of Welfare and Institutions Code Sections 362(1)(a) and 727(1)(a) in a specific unlicensed and unapproved home, and the social worker or probation officer finds that the home is not suited to the child's needs as required in Section 44-305.131(a)(1):

- (1) Protective Services, as described in MPP Chapter 30-100, shall be provided as appropriate, and
- (2) The county shall notify the court that payment of AFDC-BHI funds cannot be made.

Authority: W&IC §§ 10553, 10600 and 11400.

Reference: 45 CFR 233.110 and Miller v. Youakim, 99 S. Ct. 957, 1979, California Health and Safety Code § 1505, W&IC §§ 362(1)(a), 727(1)(a), 11003, 11251, 11400 and 11450(c).

DO NOT WRITE IN THIS SPACE

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

Amend Section 44-315.5, and .51 (Titles Only) to read:

44-315 AMOUNT OF AID (Continued)

44-315

.5 Determining Amount of Grant - AFDC-BHI

.51 Basic AFDC-BHI Payment

Authority: W&IC §§ 10553, 10600, and 11400.

Reference: Miller v. Youakim, 99 S. Ct. 957, 1979, HEW Action
Transmittal SSA-AT-79-32 (OFA), 8-15-79, and W&IC
§§ 11003 and 11251.

DO NOT WRITE IN THIS SPACE

CONTINUATION SHEET
**FOR FILING ADMINISTRATIVE REGULATIONS
 WITH THE SECRETARY OF STATE**
 (Pursuant to Government Code Section 11380.1)

Amend Section 44-317.62 to read:

44-317 BEGINNING DATE OF AID (Continued)

44-317

.62 Transfers Between AFDC (FG or U) and AFDC-BHI

.621 Where a child receiving AFDC-BHI moves to the home of a parent or relative and becomes part of an AFDC-FG/U FBU, the effective date of change is the date he/she is placed in his/her parent's or relative's home. For exception, see Section 44-203.115(b), which provides for granting assistance to the parent or relative prior to the child's arrival in the parent's or relative's home from foster care placement.

.622 When a child in a FBU is moved to foster care, the effective date of AFDC-BHI assistance is the date he/she is placed in a foster family home or private child care institution.

.623 When a child is transferring from AFDC-BHI to AFDC-FG/U, or vice versa, but remains in the home of the same related caretaker, the effective date of program transfer is the first of the month following the request for change of program. (See Section 44-323.122.)

Authority: W&IC §§ 10553, 10600, and 11400.

Reference: Miller v. Youakim, 99 S. Ct. 957, 1979, HEW Action Transmittal, SSA-AT-79-32 (OFA), 8-15-79, 45 CFR 206.10(a)(1)(i), W&IC §§ 11056, 11057, 11003, and 11251.

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

Amend Section 44-323.1 to read:

44-323 PAYMENTS FOR CHILDREN IN FOSTER CARE

44-323

AFDC | .1 Eligibility

.11 Deprivation

.111 A child placed in foster care in accordance with a court order or a services determination of the need for foster care meets the deprivation criteria of Section 41-401.

.112 If more than one basis of deprivation exists for a child in foster care, then the rule contained in Section 41-401.3 shall apply.

.12 State and Federal AFDC-BHI Program Eligibility

.121 State AFDC-BHI Program

A child in placement must be receiving care from other than his/her relative as defined in Section 44-203.22 in order to be found eligible for the State AFDC-BHI Program. In addition, all general AFDC-BHI eligibility requirements of Section 44-323.13 must be met.

DO NOT WRITE IN THIS SPACE

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

44-323 PAYMENTS FOR CHILDREN IN FOSTER CARE (Continued)

44-323

.1 Eligibility (Continued)

.122 Federal AFDC-BHI Program

A child in placement, with other
and
than his/her relative who meets all general and
federal eligibility requirements may be found eligible
under the federal AFDC-BHI Program.

A child in placement with a relative as defined in
Section 44-203.22 (except his/her natural or adoptive
parents), but who otherwise meets all general and
federal AFDC-BHI eligibility requirements as well as
general AFDC Program requirements, may be found
eligible under the Federal AFDC-BHI Program or
AFDC-FG/U, at the caretaker's option. If AFDC-BHI is
selected, then the case is treated in all respects as
an AFDC-BHI case. If AFDC-FG/U is selected, the case
is treated in all respects as an AFDC-FG/U case. See
Sections 40-109.2 and 44-323.14.

DO NOT WRITE IN THIS SPACE

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

44-323 PAYMENTS FOR CHILDREN IN FOSTER CARE (Continued) 44-323

.1 Eligibility (Continued)

.13 General AFDC-BHI Eligibility Requirements

.131 General AFDC Program Requirements

All children in foster care must meet the
following AFDC Program requirements in order for
AFDC-BHI benefits to be paid:

- a. The age requirements in Section 42-100.
- b. The property requirements _____ in
Chapter 42-200.
- c. The residence requirements in Chapter 42-400
and the citizenship and alienage requirements
in Section 42-430.
- d. The institutional status requirements in Chapter
42-500.
- e. The cost of foster care must be greater than the
child's net nonexempt income as determined in
Chapter 44-100.

.132 A child must be residing in:

- a. A foster family home which is either:
- (1) Licensed; or
- (2) Approved (See Section 44-305.131___); or
- b. A private ___profit or nonprofit ___ institution
which is licensed. _____

DO NOT WRITE IN THIS SPACE

CONTINUATION SHEET
**FOR FILING ADMINISTRATIVE REGULATIONS
 WITH THE SECRETARY OF STATE**
 (Pursuant to Government Code Section 11380.1)

44-323 PAYMENTS FOR CHILDREN IN FOSTER CARE (Continued)

44-323

AFDC

.1 Eligibility (Continued)

.133 The child, if placed under court order, must be placed by the court or court designated agency.

If a written agreement in the format given in Section 29-405 is in effect between the county welfare department and the county probation office, the probation office may act in behalf of the welfare department in placing children who are under the supervision of the probation office. (Also see Section 30-211.3).

If a court order has been issued declaring a child a ward or dependent of the court, subsequent dismissal of the court order does not result in the child's ineligibility to AFDC-BHI so long as the child continues to meet all other AFDC-BHI eligibility requirements.

.134 The child, if voluntarily placed by parent or guardian, must be placed or accepted for continued placement only upon a mutual decision between the county welfare department and the parent(s) or whoever has legal custody of the child. A placement agreement must be signed by the parent or legal guardian and the county must have determined, pursuant to a service evaluation, that a need for the voluntary placement exists.

.135 The child, if relinquished by one or both parents, may be placed by a public or private child placing agency and shall be considered deprived if he/she meets the conditions of Section 41-410.

.136 A plan must be developed for the child pursuant to Section 30-206 and the placement of such child reviewed pursuant to Section 30-209.2. A specific statement that a plan is in existence must be obtained by the EW from the Social Service System or other agency providing services and placed in the Eligibility Case File at six-month intervals for continuing cases. This applies regardless of who makes the placement.

.137 Notwithstanding Section 44-206.11, SSI/SSP may be supplemented with AFDC-BHI when the child in foster care placement meets all AFDC-BHI eligibility requirements and the child is not otherwise eligible for federal participation in foster care payments. Federal participation is not available in the AFDC-BHI supplements to SSI/SSP.

DO NOT WRITE IN THIS SPACE

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

44-323 PAYMENTS FOR CHILDREN IN FOSTER CARE (Continued) 44-323

.1 Eligibility (Continued)

.14 Federal Eligibility Requirements for AFDC-BHI

.141 A child (placed with a relative other than a parent, or a nonrelative) who is otherwise eligible under .13 above must meet all the following additional eligibility criteria to qualify for federal participation in his/her AFDC-BHI grant:

- a. The child must be removed from the home of a parent or relative, as defined in Section 44-203.22, after April 30, 1961, pursuant to a judicial determination that results in his/her placement in foster care with a nonrelative or with a different relative than the one from whose home he/she was removed.

In California, the filing of a petition with the juvenile court may result in two types of judicial determinations placing a child in foster care.

DO NOT WRITE IN THIS SPACE

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

44-323 PAYMENTS FOR CHILDREN IN FOSTER CARE (Continued) 44-323

.1 Eligibility (Continued)

.141 Continued

- (1) Detention Order: There may be an initial detention order issued after a hearing before the juvenile court to determine whether a child shall be detained pending a full juvenile court hearing. A detention order issued at such a hearing is limited to fifteen judicial days, unless renewed. (A judicial day is a day on which the court is in session, i.e., not a weekend or court holiday.) Federal participation is available in the AFDC-BHI payment made on behalf of a child placed into foster care pursuant to a detention order, providing all other general AFDC-BHI and federal eligibility requirements are met, as long as the detention order remains current.

DO NOT WRITE IN THIS SPACE

**FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE**

(Pursuant to Government Code Section 11380.1)

44-323 PAYMENTS FOR CHILDREN IN FOSTER CARE (Continued) 44-323

.1 Eligibility (Continued)

.141 Continued

(2) Jurisdictional and Dispositional Orders:

When a child is to be made a dependent or ward of the court and placed into foster care, there is a hearing before the juvenile court to make this determination. A jurisdictional order declares the child a ward or dependent of the court. A dispositional order designates to whom the child is to be released.

When the disposition is to foster care, federal participation is available in the AFDC-BHI payment made on behalf of the child, providing all other general and federal eligibility requirements are met.

DO NOT WRITE IN THIS SPACE

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

44-323 PAYMENTS FOR CHILDREN IN FOSTER CARE (Continued) 44-323

.1 Eligibility (Continued)

.141 Continued

Subsequent dismissal of the jurisdictional and dispositional orders under (2) above does not result in the loss of federal participation, providing all other federal eligibility requirements are met and general AFDC-BHI eligibility continues after dismissal of the orders. See Section 44-323.2 for special requirements for children age 18 through 20.

(b) It must be established that the child was, or would have been, eligible to AFDC-FG/U which qualified for federal financial participation in the month in which the petition was filed with the juvenile court. That is, for the month in which the petition which led to foster care placement pursuant to a detention or dispositional order was filed, the child must have met one of the following conditions:

(1) Actual eligibility to and receipt of AFDC-FG/U which qualified for federal financial participation; or

DO NOT WRITE IN THIS SPACE

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

44-323 PAYMENTS FOR CHILDREN IN FOSTER CARE (Continued) 44-323

.1 Eligibility (Continued)

.141 Continued

- (2) Eligibility to AFDC-FG/U which would have qualified for federal financial participation, but not actual receipt of these benefits because no application had been made; or
- (3) Eligibility to AFDC-FG/U which would have qualified for federal financial participation, but not actual receipt of these benefits because the child was no longer living in the home of any relative specified in Section 44-203.22. In order to meet this condition, the child must have been living in the home of any relative specified in Section 44-203.22 within any of the six months prior to the month in which the petition, which led to foster care placement pursuant to a detention or dispositional order, was filed with the juvenile court.

DO NOT WRITE IN THIS SPACE

CONTINUATION SHEET
**FOR FILING ADMINISTRATIVE REGULATIONS
 WITH THE SECRETARY OF STATE**
 (Pursuant to Government Code Section 11380.1)

44-323 PAYMENTS FOR CHILDREN IN FOSTER CARE (Continued) 44-323

.1 Eligibility (Continued)

.141 Continued

This determination that the child met the federal eligibility criteria of linkage to federal AFDC specified in (1), (2) or (3) above, is a one-time determination. As long as all other federal and general eligibility requirements are met, subsequent changes in placement do not affect this determination, unless the child is returned by the court on a nontemporary basis to the home of a parent or the relative specified in section 44-203.22 from whose home the child had been removed. In such an instance FFP would not be available unless a new petition is filed and a new detention or dispositional order is made to remove the child from the parent's or relative's home and place him/her into foster care again. The date of this new petition would then determine federal eligibility for the placement made pursuant to the new detention or dispositional order.

- c. The court order designates the county welfare department as responsible for placement, care and supervision of the child, or, the court order designates the probation office as responsible for placement, care and supervision and there is written agreement between the county welfare department and the probation office (see Section 29-405) that these services will be performed by the probation office.

- d. The child must be residing in either a foster family home which is licensed or approved or in a licensed nonprofit private institution.

DO NOT WRITE IN THIS SPACE

CONTINUATION SHEET
**FOR FILING ADMINISTRATIVE REGULATIONS
 WITH THE SECRETARY OF STATE**
 (Pursuant to Government Code Section 11380.1)

44-323 PAYMENTS FOR CHILDREN IN FOSTER CARE (Continued)

44-323

AFDC

e. A plan specifying the need and appropriateness of care must be developed for the child by the Social Services System pursuant to Section 30-206 and the placement of the child reviewed pursuant to Section 30-209.2. Such review must take place at least every six months.

f. Federal financial participation is available in an AFDC-BHI payment only where the payment is to be made to an individual providing care in either:

- (1) A foster family home, or
- (2) A private nonprofit child care institution, or
- (3) A cooperating public or nonprofit private child placement agency, or
- (4) A cooperating public or nonprofit private child care agency.

.142 Where an Indian tribal court has jurisdiction over civil actions on an Indian Reservation, its judicial determination to place a child under its jurisdiction in foster care shall be utilized in determining whether the child meets the requirements in 44-323. 141 above.

Authority: W&IC §§ 10553, 10600, and 11400.

Reference: Miller v. Youakim, 99 S. Ct. 957, 1979, HEW Action Transmittal, SSA-AT-79-32 (OFA), 8-15-79, W&IC §§ 11003, 11251, 11400, and 11450(b) and (c), 45 CFR 233.110 and 45 CFR 206.10(a)(1)(i)

DO NOT WRITE IN THIS SPACE

Chapter 29-400 AGREEMENTS AND CONTRACTS

29-405 WRITTEN AGREEMENT BETWEEN COUNTY DEPARTMENT AND PROBATION OFFICE (Continued) 29-405

WHEREAS, Section 408 of the Social Security Act and state regulation Sections 30-211.34, 44-323. 133 and 44-323. 141c require that a written agreement be in effect between the probation department and the welfare department under which a plan for each child will be made and the objectives of the Aid to Families with Dependent Children Program will be carried out to the satisfaction of the administering agency;

NOW, THEREFORE, the probation department and the welfare department agree that for each child who:

1. Is removed from his/her home after April 30, 1961, pursuant to any judicial determination that results in his/her placement in foster care; and
2. Is placed in a licensed or approved foster family care home or in a licensed proprietary or nonprofit private institution; and
3. Has a court order designating the probation department responsible for placement, care and supervision;
4. Meets all eligibility criteria for AFDC-BHI.

29-405 WRITTEN AGREEMENT BETWEEN COUNTY DEPARTMENT AND PROBATION OFFICE (Continued)

29-405

THE PROBATION DEPARTMENT AGREES TO:

1. Provide services for each child and family in accord with 45 CFR 233. 110(a)(2) which states in part:
 - a. Develop a written plan for each child.
 - b. Place the child where appropriate in a foster care home or child care facility that best meets his/her needs.
 - c. Review the service plan for each child no less frequently than every six (6) months.
 - d. Provide services of a nature that will make possible the return of children to their own home or the return to the home of a relative.
2. Assure that each child in placement is seen no less than once each month by the probation officer unless the chief probation officer or his/her designee approves an alternative plan.
3. Complete initial, annual and exit reports on DSS / Form SOC 158 on each child.

Authority: W&IC §§ 10553, 10600, and 11400.

Reference: Title IV-A, Section 408, Social Security Act and 45 CFR 233.110(a)(1)(iii), 45 CFR 233.110(a)(2), and W&IC § 11400.